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No. 79-678

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1980

SAN DIEGO GAS & ELECTRIC COMPANY,

Appellant,

v.

CITY OF SAN DIEGO, et al.,

Appellees.

On Appeal from the California Court of Appeal,
Fourth Appellate District, Division One

AMICI CURIAE BRIEF OF THE STATES OF COLORADO, DELAWARE, HAWAII, ILLINOIS, LOUISIANA, MAINE, MARYLAND, MASSACHUSETTS, MINNESOTA, NEVADA, NEW YORK, OHIO, OREGON, VERMONT, WASHINGTON and WISCONSIN

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INTRODUCTION

Pursuant to Rule 36(4) of this Honorable Court, the States of Colorado, Delaware, Florida, Hawaii, Illinois, Louisiana, Maine, Maryland, Massachusetts, New York, Ohio, Oregon, Vermont, Washington and Wisconsin hereby submit this amici curiae brief in support of the appellees City of San Diego, et al.

INTEREST OF THE AMICI STATES

In the case at bar, appellant contends that certain planning requirements and zoning ordinances of the City of San Diego constitute a "taking" of its property. The opinion of the California Court of Appeal, before this Court for review, indicated that the appropriate remedy for land use regulatory actions which "take" property is invalidation through mandamus or declaratory relief rather than an award of damages.

The cities and counties of each of these amici administer various zoning and land use measures. Some of the cities and counties of these amici have adopted ordinances designed to control their rates of growth and to ensure the adequate provision of municipal services. See, e.g., Einsweiler, Gleeson, Ball et al., Comparative Descriptions of Selected Municipal Growth Guidance Systems, A Preliminary Report, in 2 Management and Control of Growth 283 (R. Scott ed. 1975). In response to

the federal Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.), many of these amici, like California, have enacted comprehensive coastal zone management laws. See, e.g., Wash. Rev. Code Ann. §§90.58.010 et seq. Some of the amici have also enacted legislation designed to protect the resources of the wetlands of their states. See, e.g., Just v. Marinette County, 201 N.W. 2d 701 (Wis. 1972); Department of Natural Resources v. Lynchester Sand and Gravel Corp., 334 A.2d 514 (Md. 1975); Hayes v. Yount, 552 P.2d 1038 (Wash. 1976); Lovequist v. Conservation Commission, 393 N.E. 2d 858 (Mass. 1979).

Any or all of these land use regulatory provisions may adversely affect the value of privately held property. For that reason the decision of this Court will extend far beyond the immediate impact on the City of San Diego. Indeed, each of these amici emphatically join with California in asserting that adoption of appellant's position would paralyze each and every one of these regulatory measures and would inhibit the adoption of any significant regulatory measures in the future.

CONCLUSION

Each of these amici has reviewed the amici curiae brief submitted by the State of California by and through the California Coastal Commission, et al. Each amici respectfully joins in California's contention that invalidation, rather than monetary damages, is the appropriate remedy for a constitutionally impermissible regulatory action, and therefore urges that the judgment of the California Court of Appeal be affirmed.

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